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**COMMISSION TO REVISE THE ANNOTATED CODE**

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**Report on Senate Bill 1**

**Tax - Property Article**

**I. PURPOSE AND SCOPE OF CODE REVISION.**

The proposed Tax - Property Article (Senate Bill 1) is a product of the continuing revision of the Annotated Code of Maryland undertaken by the Commission to Revise the Annotated Code. The revision process was inaugurated during the First Extraordinary Session of 1973 and to date has resulted in the enactment of 15 new major articles: Agriculture, Commercial Law, Corporations and Associations, Courts and Judicial Proceedings, Education, Estates and Trusts, Family Law, Financial Institutions, Health - Environmental, Health - General, Health Occupations, Natural Resources, Real Property, State Government, and Transportation.

Each of these articles represents a formal bulk revision as mandated by the guidelines established in 1970, including improved organization, elimination of obsolete or unconstitutional provisions, resolution of inconsistencies and conflicts in the law, correction of inadvertent gaps or omissions in the law, deletion of repetitive or otherwise superfluous language, and general improvement of language and expression.

The same guidelines have been followed in the preparation of the Tax - Property Article.

The basic thrust of the Commission's work is formal; the primary purpose of its work is modernization and clarification,

not policy making. Nevertheless, at some points in its work, the Commission finds it necessary to recommend changes that address the substance of the law. The Commission has made every effort to ensure that these recommended changes conform as nearly as possible to the intent of the General Assembly. Issues involving fundamental policy are also noted. Since the resolution of these issues is beyond the purview of the revision process, the Commission has made no attempt to resolve them other than by calling them to the attention of the General Assembly for possible action. The significant issues in both of these categories are addressed in this report.

The general rule of construction the courts apply to a bulk revision was stated in Welch v. Humphrey, 200 Md. 410, 417 (1952):

"It is true that a codification of previously enacted legislation, eliminating repealed laws and systematically arranging the laws by subject matter, becomes an official Code when adopted by the Legislature, and, since it constitutes the latest expression of the legislative will, it controls over all previous expressions on the subject, if the Legislature so provides. However, the principal function of a Code is to reorganize the statute and state them in simpler form. Consequently any changes made in them by a Code are presumed to be for the purpose of clarity rather than change of meaning. Therefore, even a change in the phraseology of a statute by a codification thereof will not ordinarily modify the law, unless the change is so radical and material that the intention of the Legislature to modify the law appears unmistakably from the language of the Code."

See also Bureau of Mines v. George's Creek Coal and Land Co., 272 Md. 143, (1974); Baltimore Tank Lines v. Public Service Commission, 215 Md. 125 (1957); Welsh v. Kuntz, 196 Md. 86 (1950); Crow v. Hubbard, 62 Md. 560 (1884); and Matter of Anderson, 20 Md. App. 31 (1974).

## II. FORM, CONTENTS, AND ORGANIZATION.

The proposed Tax - Property Article conforms to the organization, form, and numbering system used in the previously revised articles. Accordingly, it will be published in a separate, unnumbered volume and will be cited by name. See Art. 1, § 25 of the Code.

The Tax - Property and State Finance and Procurement Articles are the seventh and eighth articles revised by the

Commission using language that is neutral as to gender.

The proposed Tax - Property Article is the first part of the revision of the tax laws of the State. The second part of the revision will be the Tax - General Article.

Initially, the Commission envisioned that there would be a single revised tax article. As the revision proceeded, it became clear that the revision of the tax laws was too large to be submitted to the General Assembly at a single time. Consequently, the tax law relating to property and conveyances of property were separated from the rest of the tax law revision.

For clarity and to provide a possible, future basis for consolidation of parts of the tax law and after an extensive review the current law by its Procedure Subcommittee, the Commissions Tax Committee, recommended that the proposed Tax - Property Article be structured as follows:

(1) administrative provisions - those provisions that primarily concern government;

(2) substantive provisions - those provisions that apply to assessment of property and imposition of a tax, and primarily concern taxpayers; and

(3) procedure provisions - those provisions that apply after a tax is imposed -- e.g., appeals, refunds, interest, and penalties.

The proposed Tax - Property Article includes substantially all the provisions of the public general laws relating to property tax, recordation tax, and transfer taxes. Also included are substantially all of the provisions of the public general laws that relate to the operation and duties of the State Department of Assessments and Taxation and its Director, the provisions relating to collectors, and the provisions relating to the property tax assessment appeal boards and the Administrator of the property tax assessment appeal boards. The proposed article replaces large parts of Article 81 of the Code. It also replaces Title 5, Subtitle 3 of the Natural Resources Article that related to conservation of woodland areas.

The proposed Tax - Property Article is divided into 14 titles. Title 1 contains definitions and general provisions. Titles 2 through 4 contain administrative provisions. Titles 5 through 13 contain substantive provisions concerning property taxes, recordation taxes, and transfer taxes. Title 14 contains procedural provisions concerning these taxes.

In Senate Bill 1, the statutory text of the proposed Tax - Property Article is printed in all capital letters as though it

were entirely new material. However, in many instances, comparisons of the present law with the revised law will reveal that the proposed changes are merely minor stylistic improvements.

Each section -- or, in some instances, subsection -- of the proposed article is followed by a revisor's note that explains all significant changes made in the revision process. These notes also provide a link between the revised law and the law it replaces by explaining, in detail, the relationship of the old and the new.

The revisor's notes, although not part of the law, serve an important function in preserving the intent and substance of the present or "source" law. In Murray v. State, 27 Md. App. 404 (1975), the Court of Special Appeals recognized the importance of revisor's notes not only as a statement of the revisor's intent, but as a statement of legislative intent as well:

"These notes were part of the legislation enacting the revisions explaining to the legislators not only what changes were effected but what their expressed intention was in changing the wording." Murray v. State, 27 Md. App. at 409 (Emphasis in original).

Because of their importance as recognizable elements of legislative history, the revisor's notes in the third reading file bill will be changed from those in the first reading file bill as little as practicable. Additional minor changes may also be made in them before publication by The Michie Company.

### III. PREPARATION OF THE TAX - PROPERTY ARTICLE

Each title of the proposed Tax - Property Article was prepared initially by the Commission's staff. Gary Mano Hyman, Esquire, was the article supervisor. Other staff members who drafted parts of the article were R. Lee Benson, Esquire, J. Ross Campbell, Esquire, Dennis R. Robin, Esquire, Robert R. Roth, Esquire, former staff member Myriam Bailey, Esquire and Commission Director Geoffrey D. Cant, Esquire. The editor for the article was Sherry M. Little, assisted by Dr. Harry C. Hendrickson. Additional staff members who contributed to the article were Suzanne Brogan, Esquire, Deborah Cox, Phyllis Helmick-Lindsay, Earline Johnson, Lynette Johnson, and former staff member John Sullivan, Esquire, as well as Vicki Belmore, Angela Hampe, Emily Joyce, Irene Martelli, Mary McDonald, and Frances Pyle.

Because tax law is complex and specialized, the Governor appointed additional commissioners to form the Tax Committee of the Commission. The Tax Committee is co-chaired by Roger D.

Redden, Esquire, and Shale D. Stiller, Esquire. Other members of the Tax Committee include Neal D. Borden, Esquire, Alice A. Brumbaugh, Esquire, the Honorable Julian I. Jacobs, Gerald Langbaum, Esquire, L. Paige Marvel, Esquire, Zelig Robinson, Esquire, Robert A. Rombro, Esquire, Edward F. Shea, Jr., Esquire, James J. Winn, Jr., Esquire, and Robert L. Zouck, Esquire.

To further aid the revision of property tax laws, the staff brought approximately 50 substantive issues before a joint subcommittee of the Senate Budget and Taxation and House Ways and Means Committees. Following hearings before this joint subcommittee, several legislative proposals were enacted, 2 opinions were requested of the Attorney General, a special group was established to review operating property law, and a group under the auspices of the Maryland State Bar Association was established to examine the tax sales provisions.

Initial drafts of the property tax revision were thoroughly reviewed by the Property Tax Subcommittee of the Tax Committee, chaired by Edward F. Shea, Jr., Esquire. The drafts were then reviewed at joint meetings of the full Tax Committee and the Commission.

Concurrently, the staff met with a joint committee of the Maryland Association of Counties and the Maryland Municipal League for a detailed review of nearly all of the proposed Tax - Property Article. The joint committee consisted of Glen Besa, Esquire, Patti Muhlford, Thomas Fox, Richard E. Maine, Janet Everett, Robert O. Duncan, Stanley Guild, Jr., Frederick Homan, Esquire, J. Edward Rowley, Douglas D. Browning, Irene Abell, Bill Reilly, Linda Barkley, Alan Pippinger, and Jim Peck.

The Tax - Property Article, except for 2 titles, was presented to the Senate Budget and Taxation Committee and the Code Revision Subcommittee of the House Ways and Means Committee during the fall of 1984. Thus, some of the questions raised in the revision have been resolved in Senate Bill 1.

In preparing the Tax - Property Article, the Commission, the Tax Committee, and the Commission's staff received help from numerous government officials and employees, from members of the Maryland State Bar Association, and from members of the business community. These individuals explained provisions, advised as to administrative and legal procedures, provided valuable insights, reviewed drafts, and attended Subcommittee and Committee meetings, where they made significant contributions. In particular, the Commission, the Tax Committee, and the Commission's staff are deeply indebted to Henry Riley, Gene Burner, Bill Hammond, Esquire, Bob Young, Spencer Merrick, Kaye Bushell, Esquire, Dean Kitchen, Bill Boone, Cathy Shultz, Esquire, Steven D. Shattuck, Esquire, Evelyn W. Pasquier, Esquire, Ernie Hoenig, and Alan Rudnick.

#### IV. NECESSARY MODIFICATION AND CHANGE

The following discussion provides a representative cross-section of the changes proposed by the Commission as part of the Tax - Property Article. Some of the essentially routine changes exemplified below are made elsewhere in the Tax - Property Article but are not detailed in this report, in the interest of brevity.

##### A. UNNECESSARY PROVISIONS.

Some existing statutory language is plainly unnecessary. Examples of such language include seldom used definitions, severability provisions, and provisions that are redundant of other, more general provisions.

Present Art. 81, § 71(a) is an example of a redundant definition. The subsection defines "collector" for purposes of the tax sale provisions, but as "collector" is similarly defined in present Art. 81, § 2(21), now revised as TP § 1-101(e), the present Art. 81, § 71(a) definition is deleted.

Present Art. 81, § 91, a typical severability provision, provides for the severability of §§ 70 through 90 of that article, if any of those provisions are held invalid. Article 1, § 23 of the Code provides that any statute enacted after July 1, 1973, is severable unless the statute specifically provides otherwise. Since the proposed Tax - Property Article will be enacted after July 1, 1973, and since there is no provision in the Tax - Property Article providing that the proposed article is not severable, there is no need for a severability provision in that article. Therefore, present Art. 81, § 91 is deleted.

Present Art. 81, § 69 is an example of an unnecessary provision. The section proves that a successor collector may collect the taxes that the collector's predecessor was entitled to collect. It is unnecessary to state that an officer may exercise the powers and perform the duties of the office. Therefore, Art. 81, § 69 is deleted.

##### B. OBSOLETE PROVISIONS.

Some statutory language becomes obsolete with the passage of time. A common example of such language is present Art. 81, §§ 69A, 69B, 69C, and 69D, which provide a mechanism for sheriffs and collectors to petition a court for additional time to pay taxes. The tax collection process is now so different from the tax collection process in 1852, when this series of statutes was adopted, that this procedure is now inapplicable. Therefore, present Art. 81, §§ 69A, 69B, 69C, and 69D are deleted.

References to now past dates by which actions were required

to be completed are also deleted as obsolete if, in fact, the action has been completed. For example, present Art. 81, § 232C(d)(2), which referred to a hearing regarding the constant yield tax rate in the taxable year 1978-1979, is deleted.

### C. AMBIGUOUS PROVISIONS.

Some existing statutory language is potentially troublesome because it is ambiguous. When the Commission encounters such language, the Commission attempts to resolve the ambiguity by applying well-established rules of statutory construction to determine what the General Assembly intended.

For example, present Art. 81, § 277B(e)(2) provides for an exemption from recordation or transfer tax for certain corporate or partnership transfers to a direct descendant or relative within 2 degrees. However, it was unclear whether the common law or civil law method of counting degrees was to be used. Since ET § 1-203 specifies counting by the civil law method, the language "counting by the civil law method" was added to TP § 12-108(q) to clarify the ambiguity as to recordation tax. As to transfer taxes, see TP §§ 13-207(a) and 13-405(c), which cross-reference TP § 12-108(q).

### D. GAPS AND OMISSIONS.

Occasionally, the Commission encounters gaps in the existing law created by unintentional omissions and fills them in a manner consistent with apparent legislative intent. For example, TP § 14-504 is new language added to provide for appealing a notice of assessment of personal property when the assessing is done by the Department. Recognizing that the omission was inadvertant, the Commission added a provision parallel to other appeal provisions and that conforms to current practice.

## V. DISCUSSION OF TAX - PROPERTY ARTICLE.

### A. TITLE 1. DEFINITIONS; RULES OF CONSTRUCTION; GENERAL PROVISIONS.

#### 1. General Comments.

Title 1 contains provisions that apply to the entire Tax - Property Article.

#### 2. Subtitle 1. Definitions.

As in other revised articles, Title 1, Subtitle 1 of the Tax - Property Article contains definitions that apply throughout the article.

The defined terms "county", "includes"; "including",

"person", and "state" appear in all of the recently revised articles.

The defined terms "assess", "assessment", "valuation", and "value" are added to clarify the steps in the assessment process.

The defined terms "assessment roll", "municipal corporation", "property", "real property", "supervisor", and "tax roll" are added to clarify terms frequently used in the tax - property provisions.

The defined terms "property tax", "county property tax", "municipal corporation property tax", and "State property tax" are added to distinguish between the various property taxes.

The defined term "governing body" is substituted for the present, diverse, and sometimes inaccurate references to specific governing bodies -- e.g., county council, county commissioners, and city council.

The defined terms "operating property" and "operating unit" were developed by government officials and representatives of the public service companies and railroad companies in meetings to examine the valuation procedures for certain public service company and railroad company property.

The remaining defined terms are those that presently appear in Art. 81, § 2 and that are applicable to the Tax - Property Article.

### 3. Subtitle 2. Rules of Construction.

This subtitle contains the provisions concerning oaths, residency, the liability of fiduciaries, and the taxability of common trust funds.

As a result of the 1984 revision of the Maryland Rules, TP § 1-201 has been revised to apply the terminology used in the Maryland Rules rather than reference to "verification" as provided in other revised articles. See, e.g., HG § 1-201.

### 4. Subtitle 3. General Provisions.

This subtitle contains the provisions concerning secrecy of returns, reciprocity, due dates, the responsibility of the Comptroller to collect certain taxes, and a special provision that provides for recoupment of taxes for certain federally held property.

## B. TITLE 2. STATE DEPARTMENT OF ASSESSMENTS AND TAXATION.



### 1. General Comments.

Title 2 of the Tax - Property Article is derived primarily from present Art. 81, §§ 231A through 247C.

This title covers the administration and operation of the State Department of Assessments and Taxation and the powers and duties of the Department and its Director.

### 2. Subtitle 1. Administration and Operations.

This subtitle contains the provisions that establish the State Department of Assessments and Taxation and the administrative structure of the Department.

### 3. Subtitle 2. Powers and Duties.

This subtitle sets out the powers and duties of the Director of the Department and other officials. Part I of this subtitle contains general provisions and Part II relates to distribution and accounting for funds.

Present Art. 81, § 247C(a) and (d) is ambiguous as to whether Baltimore City is to be treated as a county or municipal corporation in the distribution of funds from annual filing fees. The revision in TP § 2-220, in accordance with current administrative practice, clarifies that Baltimore City is treated as a county.

The present provisions that are premised on the assessment structure before the 1973 transfer of assessors from local employment to State employment have been revised to reflect the current structure. See, e.g., the deletion of present Art. 81, §§ 245 and 246 in the General Revisor's Note to the title and the revisor's notes to TP §§ 2-214 and 2-216(a). Similarly, present Art. 81, §§ 246B through 246D, which relates to rights of employees transferred in 1973 and the corresponding State duties have been transferred to the Session Laws. Thus, though the provisions may for the most part be obsolete, any rights that exist under present Art. 81, § 246B through 246D are retained.

Present Art. 81, § 232A, which prohibits the unauthorized sale of certain maps, is deleted in the General Revisor's Note to the title as in conflict with the federal copyright law and, therefore, in violation of the Supremacy Clause of the United States Constitution.

Also in the General Revisor's Note to the title, present Art. 81, § 37, which requires the Archivist, also the Commissioner, to prepare certificates of land that have become ready for patent, is transferred to RP § 13-206 to be among the other land patent provisions.

C. TITLE 3. PROPERTY TAX ASSESSMENT APPEAL BOARDS AND THE ADMINISTRATOR OF PROPERTY TAX ASSESSMENT APPEAL BOARDS.

This title is primarily derived from present Art. 81, §§ 224A and 248 through 250. This title concerns the operation, powers, and duties of the property tax assessment appeal boards and their Administrator. The revision in TP § 3-106(a) substitutes the general provision that a member "is subject to the Maryland Public Ethics Law" for the present provisions relating to conflict of interest and gifts.

D. TITLE 4 COLLECTORS.

1. General Comments.

This title is derived primarily from present Art. 81, §§ 51 through 67(a) and 69. The title contains provisions that relate primarily to county collectors.

2. Subtitle 1. General Provisions.

This subtitle contains provisions that relate to the appointment, compensation, and bonding of certain collectors and for the appointment of an individual to collect State taxes if a vacancy occurs.

The bonding requirements in TP § 4-102 are modernized and simplified as a result of Chapter 37, Acts of 1984, that resulted from proposals by the Code Revision Commission to the joint subcommittee of the House Ways and Means and Senate Budget and Taxation Committees.

3. Subtitle 2. Powers and Duties of Collectors.

This subtitle contains the provisions that relate to the collection, receipt, remittance, and depositing of taxes. Present Art. 81, §§ 51, 54, and 60, from which this subtitle is derived, are partially inconsistent with current practice and do not cover some aspects of current practice. As to the inconsistency regarding deposit procedure, see the revisor's note to TP § 4-202. As to gaps in the present law regarding current practice, see, e.g., TP § 4-201(c)(2) and (3) that is new language added to specify the duty of collectors to remit taxes collected for municipal corporations and special districts to the appropriate officials.

Present Art. 81, § 69, which provides that a successor collector may collect taxes owed a predecessor, is deleted as superfluous.

4. Subtitle 3. Miscellaneous Provision.

This subtitle contains the provision derived from present Art. 81, § 55 allowing for the examination of a collector's records regarding State taxes.

5. Subtitle 4. Allowances for Collection; Enforcement; State Remedies.

This subtitle is derived primarily from present Art. 81, §§ 62 through 67(a). The subtitle relates to the collection and enforcement process.

The current practice for filing suit and for stating an explicit right to a jury trial is substituted in TP § 4-403 for present Art. 81, §§ 63 through 65.

Present Art. 81, § 66 and its revision in TP § 4-404, which state who shall receive payment of money due the State as a result of a suit or judgment, is confusing and may be obsolete. The General Assembly may wish to delete this provision.

Present Art. 81, §§ 69A, 69B, 69C, and 69D, which provide a mechanism for sheriffs and collectors to petition a court for additional time to pay the taxes, is deleted in the General Revisor's Note to the title as obsolete and possibly partially unconstitutional. The tax collection process is now so different from the tax collection process in 1852, when this series of statutes was adopted, that this procedure is now inapplicable.

E. TITLE 5. PROPERTY TAX -- GENERAL PROVISIONS.

This title is derived from present Art. 81, §§ 4(c), 8(1), (2), and (6), 10(a), and the first sentence of § 242. This title contains the provisions relating to liability and reimbursement rights of persons having less than a fee simple interest, to where property is assessed and taxed, and to the duty to notify the appropriate supervisor of the issuance of building permits.

F. TITLE 6. TAXABLE PROPERTY; IMPOSITION OF TAX; SETTING TAX RATES.

1. General Comments.

This title contains the provisions describing what is subject to property tax, how property tax is imposed and by whom, and how property tax rates are set. It reorganizes provisions that were scattered throughout Art. 81 of the Code.

2. Subtitle 1. Taxable Property.

This subtitle is derived primarily from the provisions in present Art. 81, § 8 that specify what is subject to property tax.

Under present Art. 81, § 9B and current practice and as reflected in TP § 6-101(b), the only intangible property that is subject to property tax is certain property owned by the Baltimore and Ohio Railroad.

3. Subtitle 2. Imposition of Taxes.

This subtitle contains the provisions that relate to the imposition of State property tax, county property tax, and municipal corporation property tax. The provisions relating to the imposition of 1/4, 1/2, and 3/4 year taxes are revised in TP §§ 10-103 through 10-105.

4. Subtitle 3. Setting Property Tax Rates.

This subtitle contains the provisions that relate to the setting of the various property tax rates.

While present Art. 81, § 33 speaks of the General Assembly setting the State property tax rate, TP § 6-301 is revised to state that the Board of Public Works sets the State property tax rate as authorized by the General Assembly.

The interpretation of the Maryland Court of Appeals in Rosecroft Trotting and Pacing Association, Inc., v. Prince George's County, Maryland, 298 Md. 580, (1984) that, except for special district rates, there shall be a single county property tax rate for all property subject to county property tax is incorporated in TP § 6-302(b). As to the greater flexibility allowed municipal corporations in setting their property tax rates see TP § 6-303.

Regarding the constant yield tax rate provisions in TP § 6-308, the General Assembly may wish to consider that subsection (i) of that section concerning information with a tax bill, unlike the other TP § 6-308 provisions, applies only to counties and not to municipal corporations.

5. Subtitle 4. Miscellaneous.

This subtitle contains a new provision added to clarify the general process by which tax rates are applied to assessments of property to determine the property tax.

6. General Revisor's Note.

Present Art. 81, § 30(e), which provides for a discretionary decrease in property tax in municipal corporations in Allegany County, is transferred to the Public Local Laws of Allegany County.

G. TITLE 7. PROPERTY TAX EXEMPTIONS.

### 1. General Comments.

This title contains provisions relating to property tax exemptions and is derived primarily from present Art. 81, §§ 9 and 9A.

### 2. Subtitle 1. General Provisions.

This subtitle contains the general rules relating to property tax exemptions, provisions relating to the effect of property tax exemptions on State aid, and provisions relating to changes by counties and municipal corporations in the percentage of personal property that is subject to property tax exemption.

The General Assembly may wish to note that the current practice of the Department relating to abatement of property tax under present Art. 81, § 9E, revised as TP § 7-104, is to abate taxable property for an entire taxable year and not for a part of a taxable year.

Regarding the power of municipal corporations to abate personal property assessments under present Art. 81, § 9A(a), revised as TP § 7-109, the General Assembly may wish to consider if that section is superfluous in light of the broad, general power of municipal corporations to impose municipal corporation property tax under TP § 6-203.

### 3. Subtitle 2. General Property Tax Exemptions.

This subtitle contains the exemptions that are applicable to all property tax. The exemptions are arranged in alphabetical order.

Present Art. 81, § 9(1-4), revised as TP § 7-213, provides an exemption for Hart-Miller-Pleasure Island property and may be superfluous since the apparent owners of the property, the State of Maryland and the Maryland Environmental Trust, are both exempt under TP § 7-210.

The General Assembly may wish to examine the personal property exemption provisions, revised as TP §§ 7-222(b) and 7-224 through 7-226, that allow counties to modify the exemptions. Since, inevitably the county governing bodies will be changing the exemption percentages, it is probable that the percentages stated in the revision will soon be inaccurate and obsolete.

### 4. Subtitle 3. State Property Tax Exemption.

This subtitle contains the provision that exempts most personal property from State property tax.

#### 5. Subtitle 4. County Exemptions -- Mandatory.

This subtitle contains the mandatory exclusion of certain rolling stock from county property tax and municipal corporation property tax.

#### 6. Subtitle 5. County Exemptions -- Optional; Payments in Lieu of Taxes.

This subtitle contains the provisions that allow for optional county property tax exemptions and optional municipal corporation property tax exemptions, as well as the provisions for payments in lieu of those taxes.

Present Art. 81, § 9(n) and (n-1) -- which concern payments in lieu of taxes for senior citizens and low income housing, respectively -- are revised in TP §§ 7-502 and 7-503, respectively, using the ambiguous references to "subdivision" and "political subdivision", respectively, as the entity that may make agreements with the owner. The General Assembly may wish to consider substituting a reference to "county" or "county and municipal corporation" for "subdivision" and "political subdivision". Under current practice, only counties make agreements.

Also regarding TP §§ 7-502 and 7-503, the General Assembly may wish to consider specifying the manner of approval of agreements under these provisions.

### H. TITLE 8. VALUATION AND ASSESSMENT.

#### 1. General Comments.

This title contains the provisions concerning the valuation and assessment of property for property tax purposes.

#### 2. Subtitle 1. General Provisions and Valuation.

Besides containing the provisions that relate to the valuation of property, this subtitle also contains provisions as to the classification of property and general rules for assessing real property on a triennial basis, as well as the special provisions regarding operating property.

In light of the current practice to treat marshland as a separate subclass of real property and rolling stock as a separate subclass of personal property, appropriate provisions are added as TP § 8-101(b)(2) and (c)(6), respectively.

Regarding TP § 8-104, the General Assembly may wish to note that there is disagreement on how revaluation of real property is to be computed. The Department takes the position that the

revaluation of real property is to be computed using the existing 3-year cycle. Others take the position that there is to be a new 3-year cycle beginning with the revaluation.

The revision of TP §§ 8-107 and 8-108, which concerns the valuation, allocation, assessment, and apportionment of railroad and public utility operating property, is a result of meetings among Department staff, other affected government officials, and representatives of the affected businesses. The provisions of the revision were approved by all parties and by the Code Revision Commission. Consequently, TP §§ 8-107 and 8-108 are substituted for the present confusing and partially obsolete provisions of Art. 81, §§ 8(3), 14(b)(4), 16, 18, and 20.

### 3. Subtitle 2. Assessment Procedures.

This subtitle contains the provisions that concern the general assessment procedure for property tax. The subtitle is divided into 3 parts.

Part I. "In General" contains the general assessment procedures for property.

Part II. "Use Assessments" contains the provisions for the special "use" assessments for agricultural land, marshland, woodland, country club land, open space land, and planned development land.

Present Art. 81, § 19(b) requires 70-year old owners of agricultural land to apply for the special waiver before July 1, 1985. In the revision of that provision in TP § 8-209(g)(7)(i) the requirement that the application be made before July 1, 1985 is deleted so that owners who subsequently become 70 years old may apply.

In accordance with the recommendation made at the joint Budget and Taxation Committee and Ways and Means Subcommittee hearing, TP § 8-211 combines the provisions of present Art. 81, § 19(d) and present Title 5, Subtitle 3 of the Natural Resources Article.

Part III. "Special Assessments" is derived primarily from present Art. 81, § 19. It contains the provisions for assessing minerals, certain damaged improvements, manure banks, changes in buildings due to normal wear and tear or the medical condition of residents of the building, mobile homes, radiation fallout shelters, septic systems and wells, shore erosion structures, silos, and solar energy systems.

### 4. Subtitle 3. County Assessment Procedures.

This subtitle contains special county assessment procedures

for a specific dam in Montgomery County, airplane landing strips, and the Fair Hill property in Cecil County.

5. Subtitle 4. Assessment Preparation and Modification.

This subtitle contains the provisions concerning the preparation of property assessments and notification of taxpayers of the assessments.

The General Assembly may wish to note that present Art. 81, § 29 appears to make the notice to taxpayers procedure applicable to both real property and to personal property. In fact, for personal property a notice of change in assessment cannot be sent by the date of finality on January 1 for the previous calendar year because the report of personal property by the taxpayer is not required to be filed until April 15 after the date of finality. Under administrative practice, the notice is sent as soon as practicable after April 15. Therefore, the Commission to Revise the Annotated Code has clarified the present law by limiting the revision of present Art. 81, § 29 to real property, and by drafting new TP §§ 8-408 through 8-414 to specify the applicable notice requirements for personal property.

Present Art. 81, § 36, which concerns the valuation of discovered property is deleted as unnecessary in light of the provisions on escaped property in TP §§ 8-417 and 8-418. See also the revisor's note to TP § 8-417.

The General Assembly may wish to note that present Art. 81, § 47, concerning certification of assessments, and the revision of TP § 8-421(a)(2), are both inaccurate as to personal property since, in practice, there is a "rolling" roll that does not include personal property.

6. General Revisor's Note.

Present Art. 81, § 22, which concerns the duty of the Department to apportion and certify assessments to governing bodies and the duty of those governing bodies to certify the assessments to the appropriate collectors, is deleted as obsolete in light of the current Statewide assessment system under the jurisdiction of the Director.

Present Art. 81, § 32B, which concerns a local property tax credit, is deleted as obsolete. That section was enacted by Ch. 238, Acts of 1976, to provide a property tax credit less generous than the property tax credit then in existence. Chapter 238 expired on June 30, 1978. A new tax credit program was adopted by Ch. 959, Acts of 1977, as Art. 81, § 12F-7. All subsequent legislation amended Art. 81, § 12F-7; however, the then obsolete Art. 81, § 32B was not repealed.



Present Art. 81, § 44, which relates to supervisors notifying proper authorities that a person has moved property from 1 county or municipal corporation to another county or municipal corporation, is deleted as obsolete and, in any event, superfluous in light of the current Statewide assessment system under the jurisdiction of the Director.

1. TITLE 9. PROPERTY TAX CREDITS AND PROPERTY TAX RELIEF.

1. General Comments.

This title contains the provisions that authorize credits against property tax and that authorize money grants -- i.e., property tax relief -- for certain renters and other individuals.

In this title the defined term "property" has been substituted for the present references to "real and tangible personal property" and similarly, "personal property" has been substituted for the references to "tangible personal property". The only intangible personal property that is subject to any property tax is certain stock owned by the Baltimore and Ohio Railroad. See TP § 6-101(b) and its revisor's note. Therefore, any credit against tangible personal property in this title is really a credit against all of the personal property that is subject to property tax.

2. Subtitle 1. Statewide Mandatory.

This subtitle contains the provisions for mandatory Statewide property tax credits and property tax relief.

Present Art. 81, § 12F-3, which concerns property tax relief for elderly or disabled renters, requires the Department to give notice of property tax relief to all eligible renters. While this requirement is revised in TP § 9-102(d), the General Assembly may wish to note that unless the notice is by publication, the implementation of this provision is impracticable.

3. Subtitle 2. Statewide Optional.

This subtitle includes the optional property tax credits that apply Statewide.

The General Assembly may wish to note that present Art. 81, § 12G-1(b) refers to a dwelling that is occupied. This is inconsistent with present Art. 81, § 12G-1(a), which does not require that a dwelling be occupied. This inconsistency is perpetuated in TP § 9-207.

4. Subtitle 3. Counties to Which General Provisions are Applicable.

This subtitle is derived from the majority of Art. 81, § 9C. This subtitle contains an alphabetical county-by-county listing of the provisions to which the general provisions of TP § 9-301 are applicable.

The General Assembly may wish to note the impracticability of the present Art. 81, § 9C(a)(2) requirement, revised in TP § 9-301(d), that each tax bill contain notice of each Art. 81, § 9C (now Title 9, Subtitle 3 of the Tax - Property Article) tax credit to which the taxpayer is entitled.

5. Subtitle 4. Counties to Which General Provisions are Not Applicable.

This subtitle contains county-by-county property tax credit provisions that are derived from present Art. 81 provisions, other than present Art. 81, § 9C, and which are limited to selected counties.

J. TITLE 10. PROPERTY TAX PAYMENT.

1. General Comments.

This title contains the provisions concerning time of payment, reductions in payment, and liability for payment of property tax.

2. Subtitle 1. Time of Payment -- In General.

This subtitle contains the provisions regarding the payment of annual, 3/4 year, 1/2 year, and 1/4 year property taxes.

3. Subtitle 2. Variations in the Time of Payment.

This subtitle contains the provisions concerning property tax deferrals, advance payment and advance billing of property tax, and an authorization for counties and municipal corporations to impose an estimated property tax on tangible personal property under certain circumstances.

Present Art. 81, § 12F-8, which provides for county property tax deferrals on certain residential real property in Montgomery County, is decodified in light of its June 30, 1985 sunset date.

4. Subtitle 3. Reductions in Payments.

This subtitle contains the provisions concerning property tax discounts and prorating of property taxes.

5. Subtitle 4. Liability for Payment of Tax.

This subtitle contains the provisions that state who is

responsible for paying property tax.

Present Art. 81, § 8(7)(h), which concerns property tax liability for certain leased property, states "nothing herein contained shall prevent the Department ... from collecting taxes due by a landlord, or other owner of property". The General Assembly may wish to consider TP § 10-403(a), which revises present Art. 81, § 8(7)(h) and states that the Department "may impose the entire property tax liability due on the property to the ... party in possession of the property". Consequently, in these instances, the revision clarifies that the property tax may be collected from the owner of the property or the person in possession of the property.

#### K. TITLE 11. REPORTS.

This title contains the requirements for the annual report and personal property report.

#### L. TITLE 12. RECORDATION TAXES.

##### 1. General Comments.

This title contains the provisions concerning recordation taxes. This title is primarily derived from Art. 81, §§ 277 through 278. The references to stamps in present Art. 81, § 278(a) are deleted as obsolete since the Comptroller does not sell stamps and the clerks of the court do not affix stamps to instruments of writing.

The defined term "instrument of writing" in TP § 12-101(c) is substituted for present Art. 81, § 277(a)(2)(i) and for the reference in present Art. 81, § 277 (a)(1) to instruments of writing conveying title or creating liens. The revision specifically incorporates security agreements. "Security agreement" is defined in TP § 12-101(e) "as an agreement that creates or provides for a security interest". The incorporation of "security agreement" avoids the confusion created by the present reference to the types of a "secured transaction which, prior to the enactment hereof, were subject to this tax" by enumerating the instruments of writing that are subject to recordation tax based on current practice. Consequently, under the revision the clerks of the court and the Department will not have to determine what was subject to recordation tax before 1967. The General Assembly may wish to consider this substitution.

Present Art. 81, § 277 has conflicting references in the different county provisions as to whether the recordation tax rate applied to "each fraction of \$500" of consideration. The General Assembly may wish to consider the revision in TP § 12-103 that applies the recordation tax rate uniformly to "each fraction

of \$500" for all county recordation tax provisions.

Present Art. 81, § 277(f) provides for a calculation of ground rents for recordation tax purposes, and present Art. 81, § 278A(c) provides a slightly different calculation for transfer tax purposes. Present Art. 81, § 277(f) expressly exempts from tax the reversionary interest if it is retained by the fee simple interest holder when the leasehold interest is transferred. However, present Art. 81, § 278A is silent as to taxability of a retained reversionary interest. The revision in TP § 12-105(c) follows present Art. 81, § 277(f), while the revision in present TP § 13-205(a) follows present Art. 81, § 278A. The General Assembly may wish to conform these provisions.

The revision in TP § 12-105(a) substitutes the term "real property" for the word "property" in present Art. 81, § 277(c), in accordance with 41 Op. Att'y Gen. 381 (1961).

Also regarding TP § 12-105(a), the General Assembly may wish to consider expanding the scope of this subsection to include financing statements. Since collateral in this State may subject the entire amount of a financing statement to recordation tax, businesses sometimes structure their financing statements to avoid this State.

The General Assembly may wish to consider amending the exemption provision for vehicles and vessels in TP § 12-108(b) to allow for filing of statements for the vehicles and vessels with the clerks of the court without charge.

The General Assembly may wish to consider the addition, in light of current practice, of exemption provisions for land installment contracts, options to purchase real property, and deeds where tax was paid on a prior contract of sale. See, 26 Op. Att'y Gen. 425 (1941) as to option agreements, and 50 Op. Att'y Gen. 438 (1968) as to land installment contracts.

The General Assembly may wish to consider the addition of exemption for leases of 7 years or less in TP § 12-108(u), in light of the express exemption in the transfer tax and the exemption for memoranda of leases in present Art. 81, § 277(g).

Present Art. 81, § 278(b) and (c) are transferred to the Public Local Laws of Harford County and Queen Anne's County, respectively.

#### M. TITLE 13. TRANSFER TAXES.

##### 1. General Comments.

This title contains the public general laws that relate to transfer taxes. The public local laws concerning transfer taxes

remain in the appropriate county public local laws.

2. Subtitle 1. Definitions; General Provisions.

This subtitle contains definitions for this title and a provision allowing for determination of payment responsibility by agreement.

3. Subtitle 2. State Tax -- In General.

This subtitle contains the general provisions regarding the State transfer tax and is derived primarily from present Art. 81, § 278A.

4. Subtitle 3. Agricultural Land Transfer Tax.

This subtitle contains the provisions concerning the agricultural land transfer tax and is derived primarily from Art. 81, § 278F.

5. Subtitle 4. County Transfer Taxes -- In General.

This subtitle contains the general provisions that concern county transfer taxes.

6. General Revisor's Note.

Present Art. 81, § 278B, which provides authority for Anne Arundel County to impose a county transfer tax, is deleted as duplicative of the provisions for a transfer tax in the public local laws of the county.

Present Art. 81, § 278C, which sets a limit on the amount of county transfer tax revenue that the county could expend for water and wastewater construction, is transferred to the Public Local Laws of Anne Arundel County.

Present Art. 81, § 278D, which provides for a deferral of payment of the county transfer tax on certain properties in Montgomery County, is transferred to the Public Local Laws of Montgomery County.

Present Art. 81, § 278G, which authorizes Harford County to provide property tax credits against newly constructed improvements on real property where the property is served by water and sewer facilities for which the property owner pays a water and sewer assessment, is treated as a credit against a local benefit assessment charge and is transferred to the Harford County Public Local Laws.

N. TITLE 14. PROCEDURE.

## 1. General Comments.

This title contains the provisions that concern action after the property tax, recordation tax, or transfer tax is imposed - e.g., refunds, appeals, penalties, and interest. Provisions from each of the revised taxes are consolidated in each subject matter area. Thus, the appeal provisions for property tax, recordation tax, and transfer taxes are all in Title 14, Subtitle 5, "Appeals".

## 2. Subtitle 1. Definitions.

This subtitle contains the new defined term "total tax liability on property", which is used to clarify the broad scope of provisions for imposition of interest and penalties.

## 3. Subtitle 2. Returns and Records.

This subtitle contains provisions that restrict the inspection of property tax valuation records.

## 4. Subtitle 3. Determination of Liability and Enforcement of Title.

This subtitle contains provisions that relate to property tax determination and enforcement by the Department.

## 5. Subtitle 4. Assessment Procedures.

This subtitle contains provisions concerning failure to submit a report of personal property and inaccurately reported personal property.

The revision in TP § 14-401 combines provisions relating to supervisors of assessments in present Art. 81, § 43 and the provisions relating to the Department in present Art. 81, § 251.

## 6. Subtitle 5. Appeal Procedures and Judicial Procedures -- In General.

This subtitle contains provisions for appeals related to property tax, recordation tax, or transfer tax.

TP §§ 14-504 and 14-505, concerning appeal of personal property assessment when the assessment is made by the Department and petitioning for review of personal property assessed by the Department, respectively, are added to fill a gap in the current law by codifying current practice.

Present Art. 81, § 214(b), which provides for an exemption under § 511 of Public Law 84-1020, the Housing Act of 1956 (now 10 Stat. 1091, 1110-11) and the appeal and refund provisions for

that exemption, is decodified.

Present Art. 81, § 214A, which provides that an appeal determination is to be applied to all property tax, is decodified in light of the current, uniform Statewide assessment procedures.

7. Subtitle 6. Interest.

This subtitle contains the provisions concerning interest on property tax and interest on refunds after determination of an appeal. Under current practice, interest is not charged on the recordation and transfer taxes. Therefore, present Art. 81, § 204 is inapplicable to those taxes and is not revised as to those taxes.

8. Subtitle 7. Additions to Tax and Assessable Penalties.

This subtitle contains the tax penalty provisions.

9. Subtitle 8. Collection.

This subtitle contains the provisions concerning the collection of tax. The majority of these provisions concern tax sales. Unlike the other provisions in the Tax - Property Article, the provisions that relate to Tax Sales in Parts I through III of this subtitle have been only technically revised, in light of the proposed substantive revision of these provisions. The substantive revision will address the "Due Process" notice issues of Mennonite Board of Missions v. Richard C. Adams, 103 S. Ct. 2706 (1983).

Present Art. 81, § 71(a), (d), (e), (f), and (g), which defines "collector", "property", "collector's tax roll", "person", and "county", respectively, are deleted as unnecessary in light of the definitions of "collector", "property", "tax roll", "person", and "county" in TP § 1-101. Present Art. 81, § 71(h), which defined "county commissioners", is deleted as partially inaccurate and, in any event, as superfluous.

Present Art. 81, §§ 98 and 99 were enacted by Ch. 761, Acts of 1943, and present Art. 81, § 99A was enacted by Ch. 182, Acts of 1964. These sections provide procedures for foreclosing rights of redemption on property sold at tax sales before January 1, 1944, when the new procedures under the 1943 statutes became effective. Present Art. 81, § 99A also provides for certainty in title disputes by imposing a limitation on challenges to tax sales made before the new procedures became effective in 1944. The Commission to Revise the Annotated Code decided to decodify these 3 sections because of their limited application and as they may not be entirely obsolete.

10. Subtitle 9. Abatements, Credits, and Refunds.

This subtitle contains the abatement and refund provisions for property tax, recordation tax, and transfer tax.

Current practice for obtaining refunds diverges somewhat from the present law and the revision in the Tax - Property Article. The General Assembly may wish to consider a substantive revision of the refund process.

11. Subtitle 10. Crimes and Offenses.

This subtitle contains the prohibitions and penalties for property tax, recordation tax, and transfer tax violations.

Present Art. 81, §§ 124 and 125, which refer to the calling up of a posse comitatus, are deleted as obsolete.

12. Title 11. Limitations.

This subtitle contains the statute of limitations concerning property tax, recordation tax, and transfer tax. However, the statute of limitation provisions for refunds are revised in TP § 14-915.

. GENERAL TERMINOLOGY IN THE TAX - PROPERTY ARTICLE.

It is a precept of the Commission to Revise the Annotated Code to revise the law in a clear, straightforward manner, and, once something is said, to say it the same way every time it is said. To that end, in revising this article, the Commission has conformed the language and organization of this article to that of other revised articles, to the extent that the former law allowed.

Throughout the present law, the word "levy" is used in 4 different senses. It is used as a verb to mean imposing a tax and setting a tax rate. As a noun "levy" is used to mean the imposition of a tax and a lien against property. To avoid confusion in the Tax - Property Article, the more precise references to "imposing" a tax, "setting" a tax rate, "imposition" of a tax, and "lien" are used.

Throughout the Tax - Property Article, where the present law refers to the counties and Baltimore City, the reference to Baltimore City is deleted as unnecessary in light of the use of the defined term "county". Where the present law refers to Baltimore City in a capacity other than as 1 of this State's 24 counties, the revision retains the specific reference to Baltimore City.

Also throughout the Tax - Property Article, for consistency

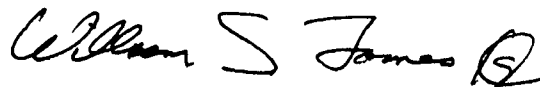


and to avoid unnecessary confusion, the word "regulations" is substituted for present references to "rules and regulations", the singular verb "adopt" is used in relation to regulations, and verbs such as "prescribe" and "promulgate" are deleted. See generally, Title 10, Subtitle 1 of the State Government Article.

Also throughout the Tax - Property Article, the defined term "property tax" is substituted for the present term "ordinary tax". While present Art. 81, § 6 divides taxes into the classifications of "ordinary taxes" and "special taxes", the only "ordinary taxes" are the taxes imposed on real and personal property. This substitution eliminates a possibly misleading synonym for the defined term "property tax".

Senate Bill 1 includes the standard savings provisions to ensure that no rights or privileges are changed by virtue of the revision of these laws.

Respectfully submitted,



William S. James  
Chairman



Geoffrey D. Cant  
Executive Director

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